IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dhirender Kumar. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 602/2005
against the order dated 17-8-2004 passed
by the Sub-Divisional Magistrate, Banswara,
in Case No. 22/2004.

...

Date of Order: September 20, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. S.D. Purohit, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereianfter) is directed against the order dated 17-8-2004 passed by the Sub-Divisional Magistrate, Banswara (for short, "the Executive Magistrate" hereinafter) in Case No.22/2004.

Heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned.

It appears that the proceeding under Section 133 of the Code was initiated and a show cause notice was issued to the petitioner to show cause as to why the interim order be not made absolute. Instead of showing cause to the Executive

Magistrate, the petitioner has filed the instant criminal miscellaneous petition.

Learned counsel for the petitioner submits that for the very purpose, a civil suit has been filed by the petitioner and interim order passed by the civil court is operating in his favour and the land bearing Khasra No. 276/3 and 279/3/1 measuring 2 Bighas and 10 Biswas is the land belonging to the petitioner and the same has been recorded as the Khatedari land, therefore, it cannot be said that the petitioner has caused any public nuisance. Learned counsel for the petitioner further submits that a writ petition has also been filed by the petitioner before this Court.

Be that as it may, the petitioner may appear before the Executive Magistrate and show cause, including the interim order passed by the Civil Court in the civil suit, as also any order passed by this Court in the writ petition filed by the petitioner and the Executive Magistrate shall take into account the same while deciding the matter as to whether the interim order is to be made absolute or not.

With these observations, the criminal miscellaneous petition stands disposed of. The stay petition also stands disposed of.

(H.R. PANWAR), J.

mcs